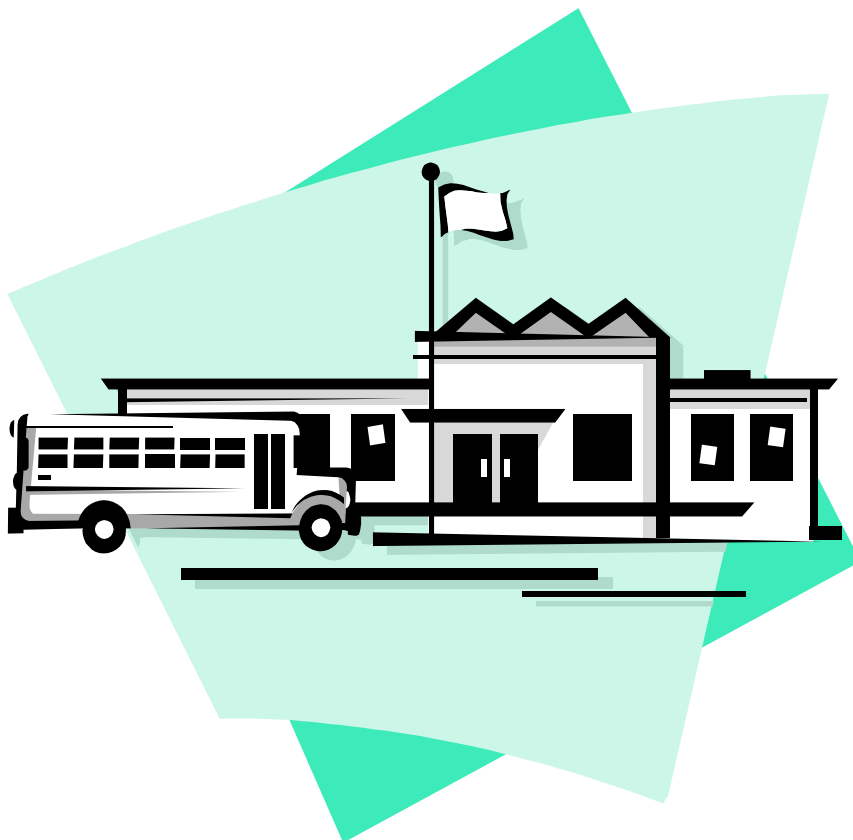


TENNESSEE Work-Based Learning



Legal Issues Guide

This document is intended to serve as a general guide, not to offer legal advice. Questions regarding individual situations should be addressed to an attorney of your choice.

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	LIABILITY AND INSURANCE	3
	IMPORTANT CONCEPTS	3
	THE SCHOOL SYSTEM.....	4
	THE EMPLOYER	4
	TRANSPORTATION.....	5
III.	HEALTH/SAFETY	6
	TENNESSEE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (TOSHA).....	4
	SAFETY INSTRUCTION	6
IV.	EQUAL EMPLOYMENT OPPORTUNITY LAWS.....	8
	INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)	8
	THE AMERICANS WITH DISABILITIES ACT (ADA)	9
	REHABILITATION ACT OF 1973, INCLUDING 1992 AMENDMENTS, SECTION 504.....	9
	CIVIL RIGHTS ACT (1964) - EDUCATION AMENDMENTS OF 1972 - TITLE IX.....	9
V.	EMPLOYMENT SECURITY LAW	10
VI.	FAIR LABOR STANDARDS ACT (FLSA)	11
	OVERVIEW.....	11
	Who Is Covered?	11
	Who Does it Apply To?	11
	SCHOOL-TO-WORK AND THE FLSA: WHAT YOU NEED TO KNOW	11
VII.	FEDERAL WAGE AND HOUR LAWS	13
	EMPLOYMENT DEFINED	13
	UNPAID WORK EXPERIENCE	13
	Student Learners	13
	Volunteers.....	14
	PAID WORK EXPERIENCE	14
	Minimum Wage.....	14
	Youth Subminimum Wage	15
	Tip Credit	15
	Subminimum Wage	15
VIII.	TENNESSEE WAGE REGULATIONS ACT.....	16
	EMPLOYMENT DEFINED	16
	PAID WORK EXPERIENCE	16

IX.	CHILD LABOR LAWS.....	17
	OVERVIEW.....	17
	WBL Experiences NOT Subject to the FLSA.....	17
	WBL Experiences Subject to the FLSA.....	17
	Criteria Under Which a WBL Experience is Not Employment.....	17
	FEDERAL CHILD LABOR LAW	18
	AGRICULTURAL EMPLOYMENT	18
	Age Limitations.....	18
	Hazardous Agricultural Occupations	18
	Hazardous Occupations Exemptions	19
	NON-AGRICULTURAL EMPLOYMENT	19
	Exempt Occupations/Situations	19
	Age Limitations.....	20
	Occupational Limitations	20
	HAZARDOUS OCCUPATIONS ORDER EXEMPTION QUALIFICATIONS	21
	Seven HOs Orders with Exemptions Applicable to Minors in Training	21
	Clarification of Hazardous Occupations Orders	22
	TENNESSEE CHILD LABOR ACT	24
	AGE LIMITATIONS	24
	YOUTH PEDDLING	24
	COMPARISON—FEDERAL AND TENNESSEE CHILD LABOR LAWS	25
	COMPARISON—FEDERAL AND TENNESSEE CHILD LABOR LAWS (CHART)	26
X.	REQUIRED FORMS.....	27
XI.	RESOURCES.....	29
XII.	NOTES.....	30

INTRODUCTION

The purpose of this Guide is to provide information to those creating and implementing local work-based learning opportunities including teachers, school administrators and employers. It addresses the various legal issues that must be considered when planning partnership programs including the number of hours students may work, the jobs which students may perform, and who is responsible if a student is injured while participating in the program.

LIABILITY AND INSURANCE

Important Concepts

Liability. Liability refers to the legal responsibility to fulfill an obligation. For example, a driver found to be at fault in a traffic accident might be liable to pay for the damages he/she caused to the other car.

Tort law. A tort is a wrongful act, other than the breach of a contract, which causes damage to another person. An intentional tort exists when a person intentionally acts to harm another person, such as punching someone, or harming another's property, such as setting a house on fire. In contrast to intentional torts is the tort of negligence, which occurs when a person fails to act.

Negligence. Negligence is the failure to use reasonable care towards another person or another's property. For example, a driver who fails to observe the speed limit and injures another consequently may be found negligent in operating his vehicle.

Workers' Compensation. Workers' compensation is a plan arranged by an employer to provide benefits to employees injured on the job by accident or who contract occupational disease resulting from their employment. In Tennessee, every employer with more than five (5) employees is required to carry workers' compensation insurance. The employer's insurance company provides workers' compensation benefits to injured employees, including lost wages, medical expenses, and vocational rehabilitation. Workers' compensation provides benefits to an injured worker regardless of whose fault the accident was and regardless of the financial condition of the employer. This law is administered by the Tennessee Department of Labor and Workforce Development, Workers' Compensation Division, 710 James Robertson Parkway, 2nd Floor Andrew Johnson Tower, Nashville, TN 37243-0661, (615) 741-2395.

The School System

A school system has a duty to use reasonable care toward its students. If a school fails to supervise students or to warn them about an unsafe condition on the school grounds, a court may find that the school was negligent. The school's duty of reasonable care extends to school-related activities that take place off school grounds, such as field trips. The duty also extends to work-based learning activities where students are placed in a workplace.

Considering their exposure to lawsuits by students and their families, schools generally carry "general liability insurance" that covers such claims. Administrators of schools planning to place students in off-campus workplaces would be wise to contact their insurance carriers and confirm that their insurance policies would cover students while they are working. If a policy does not, it should be possible to secure additional coverage for those students in the program.

Tips for Schools:

- **Confirm that the school's general liability insurance covers work-based learning activities.**
- **Require participating employers to provide proof of their general liability insurance and workers' compensation insurance. Usually, a "certificate of insurance" is issued.**

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The Employer

It is important for employers to realize that participation in an Work-Based Learning program does not change or increase their liability under common law, workers' compensation, child labor and occupational, safety and health laws. **Thus, participation involves no liability obligations beyond those already existing towards regular employees and members of the public.**

When an individual is injured on the job, the workers' compensation law will usually limit the employer's liability to a fixed sum of money, along with approved medical expenses. Workers' Compensation, however, generally applies only to employees and not to volunteers. Courts have held that where a person receives something of value in exchange for performing actual services for the employer, he/she will be considered an "employee" within the workers' compensation system. Accordingly, a student working for a business under a paid internship, cooperative education or formal apprenticeship program will be considered a covered employee and should be limited to filing for workers' compensation benefits. **Where a student does not receive a monetary payment, it may not be clear whether he/she would be considered an employee covered by workers' compensation. Where an unpaid student receives academic credit and/or valuable work experience in exchange for performing work, the student does not qualify for workers' compensation coverage. He/she should be covered under the employer's general liability insurance policy.**

Tips for Employers:

- **Ensure that student workers receive safety training like regular employees.**
- **Keep a copy of the student agreement in the employee's file.**
- **Consult your insurance carrier if uncertain whether a student would qualify for workers' compensation benefits.**

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Transportation

Transportation issues arise in work-based learning activities when students are required to leave school premises in order to continue learning at the worksite. The following are the most common forms of student transportation to and from the worksite and the coverage that, in most situations, will apply:

Transportation	Liability Coverage
School transports the student on school bus.	School bus insurance coverage extends.
Employer provides van to transport student employees.	Employer's insurance coverage extends.
Student uses public transportation.	School's coverage extends where applicable.
Student drives own vehicle.	Student's personal auto insurance coverage extends.

In all cases, parents (secondary students) should sign transportation agreements before students are permitted to travel to and from worksites. When students drive personal vehicles, conditions of transportation should be reviewed and defined. Typically, these conditions include:

- verification of student driver's license and insurance coverage;
- limiting transportation to student driver (*e.g.*, no passengers); and
- limiting transportation for the sole purpose of getting to and from the worksite.

HEALTH/SAFETY

Tennessee Occupational Safety and Health Administration (TOSHA), by adoption, enforces the standards established by Federal OSHA to ensure a safe and healthy workplace for all Tennessee citizens, regardless of age. Employers participating in the work-based learning program should place special emphasis on the following considerations:

1. **Maturity to accomplish the job.**
2. **Physical ability to perform the task.**
3. **Safety training on any equipment to be operated.**
4. **Proper supervision.**
5. **Proper personal protective equipment.**

TOSHA does not distinguish workers by age. Obviously, age does play an important part when evaluating whether an individual can be expected to perform certain tasks in a safe and healthful manner.

Questions regarding standards enforced by TOSHA can be answered by calling (800) 249-8510 or (615)-741-2397 Consultative Services are available at no charge on a statewide basis. For more information on development of a health and safety plan contact: Tennessee Department of Labor and Workforce Development, Consultative Services, 710 James Robertson Parkway, 3rd Floor Andrew Johnson Tower, Nashville, TN 37243-0659, (800) 325-9901.

Safety Instruction

Every precaution must be taken to ensure a student learner's safety. It is imperative that worksite selection includes a commitment to activities that are educationally sound and not injurious to a student learner and his/her health or well being.

Each student should have a training plan that identifies all safety instruction to be provided by the school, the employer or any other party. A written checklist as part of the training plan should indicate when such safety instruction was provided and by whom.

Basic safety rules include:

- Instructing student learners regarding the proper procedures in case of fire.
- Never permitting students to operate equipment without first being trained and checked out under the supervision of a mentor.
- Complying with all safety rules.
- Reporting unsafe conditions immediately.
- Wearing protective equipment or clothing.
- Using the correct tool for the job.
- Keeping the work area clean and orderly.

At the worksite, students must follow the same health and safety rules governing regular employees. To ensure student safety on job sites, coordinators should arrange for student use of any required special safety or health gear such as goggles, welding outfits, hard hats, or safety shoes. Worksites, local businesses, or labor groups may wish to provide these items to students. Student health and safety measures in the health sciences might require that students be tested for immunity from tuberculosis and immunized against hepatitis. Instructors in these programs will need to follow what the health care facilities require of students. The Department of Education has more restrictive requirements for secondary health science programs.

EQUAL EMPLOYMENT OPPORTUNITY LAWS

State and Federal laws make it illegal for employers to discriminate in hiring, treating or promoting employees on the basis of race, color, national origin, religion, sex, age, or disability. The major laws affecting the hiring and promotion of workers are discussed below. The equal employment opportunity laws generally apply to all elements of an employer-employee relationship, including recruitment, hiring, placement, assignments to work tasks, hours of employment, levels of responsibility and pay. Teacher/coordinators are responsible for ensuring that employers or prospective employers in any of these areas do not discriminate against student learners.

When conducting interviews with potential training sponsors, it is imperative that teacher/coordinators inform each employer of the non-discrimination policy of the school. An employer who refuses to act in accordance with this policy should not be accepted as a training sponsor. Teachers/coordinators may not honor an employer's request for students who are free of disabilities or for students of a particular race, color, national origin or sex. It is also a discriminatory practice to maintain separate referral lists for males and females or separate lists of "male" and "female" job openings.

The written agreement (Training Agreement) which assigns a student learner to an employer must contain an assurance from the employer that the student will be accepted, assigned to jobs and otherwise treated without regard to race, color, marital status, national origin, sex or disability. Teachers/coordinators have the responsibility of canceling a training agreement if an employer discriminates based on any of these traits or in any aspect of the employer-employee relationship.

For more information, contact the Equal Employment Opportunity Commission (EEOC), 50 Vantage Way, Suite 202, Nashville, TN 37228-9940, (800) 669-4000.

Individuals with Disabilities Education Act (IDEA)

This law ensures that all children with disabilities have available to them a free appropriate public education and related services to meet their unique needs. The U. S. Department of Education administers this law. Work-based learning for students with disabilities includes exploration, assessment and training, **but must be directly related to the student's individual education plan (IEP).**

Unpaid students with disabilities may spend:

- Up to 5 hours per business for vocational exploration;
- Up to 90 hours per worksite for vocational assessment; and
- Up to 120 hours per job experience for vocational training.
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Unpaid community-based employment opportunities for students with disabilities must meet the following criteria:

- The business derives no immediate advantage from the work of the student.
- The student does not displace any regular employee.

- The student was placed according to his/her IEP.
- The amount of time per week at the worksite is limited to meeting the requirements of the IEP.
- School officials or business representatives supervise the students.
- The individual is not entitled to a job at the end of the training period.

The Americans with Disabilities Act (ADA)

Civil rights legislation extends protected status to all disabled individuals; it prohibits discrimination based on disability—whether an individual is hired by the school district or employed in cooperative or other work programs. The federal Equal Employment Opportunity Commission administers this law. Students with disabilities are required to have equal opportunity for work-based learning opportunities. Participating employers are expected to provide reasonable accommodations for these students as they would for all employees.

Rehabilitation Act of 1973, including 1992 Amendments, Section 504

Closely linked to the Individuals with Disabilities Education Act (IDEA), this law ensures that students with disabilities have a smooth transition between the education system and the vocational rehabilitation system. The 1992 amendments encourage individuals with disabilities to maximize their employment, economic self-sufficiency, independence, and inclusion and integration into society. It is important to note that students covered under Section 504 of this act may not be covered under IDEA. This law is administered by Vocational Rehabilitation in Tennessee. For more information contact: Vocational Rehabilitation Division, 400 Deaderick Street, Nashville, TN 37248-0001, (615) 313-4714.

Civil Rights Act (1964) - Education Amendments of 1972 - Title IX

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in all educational institutions that receive federal financial assistance, in federally funded education programs in non-educational institutions, and in institutions whose students receive federal financial aid. The law protects students and employees. Options for filing a complaint under Title IX include:

- file through Title IX grievance procedures at the school site;
- file a complaint directly with the Office for Civil Rights or equivalent state agency; or
- file a civil suit.

For information contact: Tennessee Human Rights Commission, 530 Church Street, Suite 400, Nashville, TN 37243-0745, (615) 741-5825 or 1-800-251-3589.

EMPLOYMENT SECURITY LAW

This law provides unemployment insurance benefits in the event an employee is out of work through no fault of their own. The worker must have earned sufficient wages in covered employment and be able, available and seeking employment, and meet all other personal eligibility requirements of the law. It is a federal-state cooperative program. Each state has its own laws and is responsible for determining who is eligible for benefits, how much they receive, and for how long. Benefits are paid as a matter of right and are not based on need. Unemployment insurance benefits are financed entirely by payroll taxes paid by employers, except in three states—Alabama, Alaska and New Jersey. In these states, employees also contribute. As a rule, however, an employer may not require employees to contribute to an unemployment insurance fund.

*Student learners in bona fide state-approved training programs are **not eligible** for unemployment insurance compensation.* A student is disqualified for benefits if he/she registered for full attendance and regularly attended an established school, college or university, or has so attended during the most recent school term.

Attendance for vocational training or retraining under a plan approved by the Department of Labor and Workforce Development, Employment Security Division is **not disqualifying**. However, training in an approved cooperative vocational education program is disqualifying. Student learners are not eligible to receive benefits for wages earned during this training period. The student disqualification does not apply if the student's major portion of wages for insured work during the base period was for services performed while attending school. Contact the local Job Service office listed in the telephone directory for assistance.

FAIR LABOR STANDARDS ACT (FLSA)

Overview

The FLSA covers minimum wage, overtime pay, child labor, and more. Within this law are specific sections that apply to student learners. These sections specify what conditions must exist for non-paid wage status, hours minors can work, and the jobs they can perform or not perform. **The law impacts work-based learning to the greatest degree of all the labor laws and cannot be waived.** The FLSA is administered by the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Fair Labor Standards, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 219-4907. The Tennessee office of the U.S. Department of Labor is located at 1321 Murfreesboro Road, Suite 511, Nashville, TN 37217-9884, (615) 781-5344.

Who Is Covered?

The FLSA covers employees who are performing work for any one type of enterprise that is either:

- engaging in interstate commerce.
- producing goods for interstate commerce.
- handling, selling, or otherwise working on goods or materials that have been moved or produced for such commerce.
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Who Does it Apply To?

The FLSA applies to:

- all 50 States, and
- 90% of all non-agricultural businesses (all businesses with annual gross sales of not less than \$500,000 and all hospitals, schools, and public agencies).
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Work-Based Learning and the FLSA: What You Need to Know

If an employment relationship exists and the student learner or employee is covered by the FLSA, the employer must conform to Federal and State child labor laws and pay minimum wage including overtime for over 40 hours per week. **There are no waivers to compliance with the FLSA.**

Employment Relationship	+	FLSA—Covered Students and/or Enterprises		=
Conformance to Federal Child Labor Laws (or state/local laws if more protective)		Payment of Federal Minimum Wage (state has no minimum wage)		Overtime Pay (for over 40 hours/week)
	+		+	At 1½ Times Regular Pay
				(state has no overtime rate)
NO FLSA WAIVERS				

FEDERAL WAGE AND HOUR LAWS

(Part of the FLSA)

Employers covered by the FLSA must comply with the provisions of this act if an employment relationship exists.

Employment Defined

In order to be considered as employment, the activity performed must be (1) services for wages (paid), and (2) under a contract of hire that is written or oral, expressed or implied. Most work-based learning experiences are paid and are covered by the Federal FLSA or Tennessee Wage Regulations Act. However, unpaid work-based learning is possible.

Unpaid Work Experiences

To ensure that a work-based learning experience is acceptable as unpaid under the FLSA, it must meet the following criteria.

1. A planned program of job training and work experience for the student must be appropriate to the student's abilities—which includes training related to pre-employment and employment skills to be achieved at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate.
2. The learning experience encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills.
3. The learning experience has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills.
4. The learning experience provides for real or simulated tasks or assignments, which push students to develop higher-order critical thinking and problem-solving skills.

***The two major classifications of unpaid work experiences are Student Learners and Volunteers:**

Student Learners

A student enrolled in a learning experience would not be considered an employee within the meaning of the FLSA, if all of the following additional criteria were met:

The student receives on-going instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the

result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided.

The training is similar to that given in a vocational-technical school.

The placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee—e.g., the presence of the student at the worksite cannot result in any employees being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he/she would otherwise work.

The training is for the benefit of the student learner (trainee).

The student is not entitled to a job at the completion of the learning experience—**but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training.**

The employer, student, and parent or guardian (secondary students) understand that the student is not entitled to wages or other compensation for the time spent in the learning experience—although the student may be paid a stipend for expenses such as books or tools.

If **all** the foregoing criteria were met, an employer would not be required to pay wages to a student enrolled in a work-based learning experience. If, however, some of the above criteria were not met, it is still possible that a work-based learning participant would not be an employee under the FLSA; however, all of the facts and circumstances would have to be considered.

Volunteers

Volunteer positions are outside of the FLSA, and students in such positions are considered employees and need not be paid. However, students are not considered volunteers, within the meaning of the FLSA, if the students are not volunteering purely for the public good, but rather are attempting to gain work experience. **In addition, schools cannot legally require students to volunteer or perform unpaid public service as a way to gain vocational experience, satisfy graduation requirements, or any other purpose. This effectively eliminates volunteer status as a work-based learning alternative.**

Paid Work Experience

If a student does not meet the FLSA criteria for unpaid wage status, they must be paid at least the Federal minimum wage.

Minimum Wage

The FLSA minimum wage is \$5.15 per hour as of September 1, 1997. Overtime must be paid at the rate of 1½ times the regular pay for each hour worked in excess of 40 hours per week.

Youth Subminimum Wage

Youth under 20 years of age may receive a Subminimum wage of \$4.25 an hour—during the first 90 consecutive calendar days of employment with an employer. Employers using a Subminimum wage are prohibited from displacing any employee or reducing their hours, wages, or employment benefits.

Tip Credit

Tipped employees (e.g., waiters and waitresses) must be paid at least \$2.13 an hour, and receive at least the minimum wage per hour when combined with an employee's tips. If the combination of minimum wages and tips do not equal the minimum hourly wage, the employer must make up the difference.

Subminimum Wage

The FSLA does allow for other wage rates below the minimum wage in training situations.

1. Full-time students employed by certified retail or service firms, agriculture, or institutions of higher education may be paid 85% of the applicable minimum wage.
2. Students with severe disabilities can be paid wages commensurate to their individual productivity under the Special Education School Work Experience Certificate.
3. Part-time Cooperative Vocational Education student learners and apprentices may be paid 75% of the applicable minimum wage under certain conditions.
4. Apprentices in an apprenticeship program registered with the **U.S. Department of Labor** may be paid 50% of the journeyman's rate as authorized by the apprenticeship agreement.

The special Subminimum wage for student learners should only be encouraged when it will help a student gain employment in an occupation in which they might often be disregarded. Consideration should be given to the welfare of the student and the circumstances of the training station for just cause in using the special minimum wage.

Work-Based Learning coordinators must be knowledgeable of the procedures to secure a Subminimum Wage Certificate and be ready to assist employers, if such a waiver is desired. If a certificate is obtained for a student learner, the WBL coordinator should keep a copy on file for a period of three years after the student learner graduates.

Application forms for Subminimum Wage Certificate (Form WH-205) can be obtained from the U.S. Department of Labor (USDOL), Wage and Hour Division, 1321 Murfreesboro Road, Suite 511, Nashville, TN 37217-9884, (615) 781-5344.

TENNESSEE WAGE REGULATIONS ACT

This Act requires employees to be informed what they will be paid before performing the work; employers must establish and maintain regular paydays. The Tennessee Wage Regulations Act should not be confused with the Federal Wage and Hour Law described above. Those businesses covered by the Federal law are required to pay the Federal minimum wage. Contact: Tennessee Department of Labor and Workforce Development, Labor Standards Division, 404 James Robertson Parkway, 16th Floor Parkway Towers Suite 1606, Nashville, TN 37243-0657, (615) 741-2858 Option # 3

Employment Defined

Under this Tennessee law, an employee is an individual hired to work for an employer or an individual who is permitted to do work for an employer. Employers covered by this law are defined as any private employment which employs five (5) or more employees at any one time.

• Paid Work Experience

If a student does not meet the FLSA criteria for unpaid wage status, they must be paid at least the Federal minimum wage.

CHILD LABOR LAWS

Overview

The child labor provisions of the FLSA apply to the employment of children by covered enterprises although establishments may be exempt from its monetary provisions. These provisions are designed to confine the employment of minors to periods that will not interfere with their schooling and to conditions that will not jeopardize their health and well-being.

In addition to the Federal law, Tennessee also has a child labor law. When both of these laws regulate the same activity or conduct and their rules conflict, ***the stricter labor standard is the one that applies***. Not all work-based learning (WBL) experiences are subject to the child labor provisions of the FLSA.

WBL Experiences NOT Subject to the FLSA

Activities occurring in the workplace that ***do not*** involve the performance of work are not “employment”; subject to the FLSA. Some examples of these activities include:

- Career awareness and exploration.
- Field trips to a worksite.
- Job shadowing (student follows and observes but performs no work).
-

WBL Experiences Subject to the FLSA

The child labor provisions of the FLSA apply when it is determined that workers under age 18 are in a situation in which:

- An employment relationship exists.
- The enterprise or the student is covered by the FLSA.

Criteria Under Which a WBL Experience is Not Employment

A learning experience would not be employment if all the following criteria were met:

- Student productivity is offset by the employer’s burden to provide on-going work-site instruction and supervision.
- Training is similar to vocational-technical school training.
- Student placement does not result in displacement of regular worker.
- Training is for the benefit of the student learner.
- Student is not entitled to a job at the end of the learning experience.
- Employer/student/parent understand the student is not entitled to wages or other compensation for their time. (May be paid a stipend for expenses such as books/tools).

Schools and school-to-work partnerships are not responsible for determining whether an enterprise is covered by the Fair Labor Standards Act, nor are they responsible for enforcing the Federal child labor provisions. **However, they are obligated to operate within the law.** Although the Federal child labor provisions obviously have a more direct impact upon secondary work-based learning activities, they also affect post-secondary work-based learning.

Federal Child Labor Law

(Part of the FLSA)

The requirements of the child labor provisions of the FLSA have been divided into two categories: agricultural occupations and nonagricultural occupations.

Agricultural Employment

The provisions for work in agriculture are less restrictive than those for non-agricultural occupations. **Be aware, however, that “agricultural” in terms of FLSA, refers to family farms, not agricultural operations that ship their products across state lines or those who work or process products other than their own.**

Age Limitations

Under 12 Years of Age. Youths under 12 years old may perform jobs on farms owned or operated by parents or, with parents’ written consent, outside of school hours in non-hazardous jobs on farms not covered by minimum wage requirements.

12 and 13 Years of Age. Youths 12 and 13 years old may work outside of school hours in non-hazardous jobs, either with parent’s written consent or on the same farm as the parents.

14 and 15 Years Old. Youths 14 and 15 years old may perform any non-hazardous job outside of school hours.

16 and 17 Years Old. Youths 16 years and older may perform any agricultural job, whether hazardous or not, for unlimited hours.

Hazardous Agricultural Occupations

The following occupations in agriculture are hazardous. Minors under 16 may not be employed at any time in these occupations unless working for a parent on a farm owned or operated by that parent.

Operating a tractor of over 20 PTO horsepower, or connecting or disconnecting an implement or any of its parts to or from such a tractor.

Operating or assisting to operate any of the following machines: Corn picker, cotton picker, grain combine, hay mower, forage harvester, hay baler, potato digger, or mobile pea viner; Feed grinder, crop dryer, forage blower, auger conveyor, or the unloading mechanism of a non-gravity-type self-unloading

wagon or trailer; Power post-hole digger, power post driver, or non-walking-type rotary tiller.

Operating or assisting to operate any of the following machines: trencher or earth moving equipment, fork lift, potato combine, power-driven circular, band, or chain saw.

Working on a farm in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; sow with suckling pigs; or cow with newborn calf.

Felling, bucking, skidding, loading, or unloading timber with butts diameter of more than 6 inches.

Working from a ladder or scaffold at a height of over 20 feet.

Driving a bus, truck, or automobile when transporting passengers, or riding on a tractor as a passenger or helper.

Working inside a fruit, forage, or grain storage designed to retain an oxygen deficient or toxic atmosphere; an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position; a manure pit; or a horizontal silo while operating tractor for packing purposes.

Handling or applying agricultural chemicals identified by the word poison and the skull and crossbones on the label or those identified by the word warning on the label.

Handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord.

Transporting, transferring, or applying anhydrous ammonia.

Hazardous Occupations Exemptions

Fourteen and fifteen year olds who are enrolled in a bona fide vocational agriculture program may obtain an exemption from Orders 1-6.

Non-Agricultural Employment

The provisions for work in non-agricultural employment are more restrictive than those for agricultural occupations and affect the employment of nearly all-working minors with a few exemptions.

Exempt Occupations/Situations

- Children under 16 years of age employed by their parents in occupations other than manufacturing or mining, or occupations declared hazardous by the Secretary of Labor.
- Children employed as actors or performers in motion pictures, theatrical, radio, or television productions.
- Children engaged in the delivery of newspapers to the consumer.
- Home workers engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of evergreens).
- Domestic service employees working in or about the household of the employer.

Age Limitations

Under 14 Years of Age. Youths under 14 may work only if their jobs are exempt from child labor standards or not covered by the Fair Labor Standards Act. Exempt work includes: delivery of newspapers to consumers; performing in theatrical, motion picture, or broadcast productions; and work in a business owned by the parents of the minor, except in manufacturing or hazardous occupations. In general, minors under the age of 14 may not be employed in nonagricultural occupations. Their activities in work-based learning programs must be limited to activities such as career awareness and exploration activities, classroom presentations, field trips to worksites, and job shadowing. Actual work or employment is not an option for this age group.

14 and 15 Year Olds. Students who are 14 and 15 years of age may work at jobs such as office work; various food service jobs; sales work and some other jobs in retail stores; errand and delivery work by foot, bicycle and public transportation; dispensing gasoline and oil and performing courtesy services in gas stations; and in most cleanup work. The hours of work cannot exceed three hours on a school day with a limit of 18 hours in a school week; no more than eight hours on a non-school day with a limit of 40 hours in a non-school week; and not before 7:00 am or after 7:00 p.m., except from June 1 through Labor Day, when the evening hour is extended to 9:00 p.m.

14 and 15 Year Olds - WECEP Exceptions. There are exceptions to these restricted hours and occupations under the Work Experience and Career Exploration Program (WECEP). Under WECEP, students who are 14 and 15 years of age and enrolled in an approved program can be employed during school hours, for up to three hours on a school day, up to 23 hours in a school week, and in occupations otherwise prohibited. WECEP status is subject to the approval of the Administrator of the Wage and Hour Division of the U.S. Department of Labor and must be granted to the Tennessee Department of Education in order for this exception to apply.

16 and 17 Year Olds. There are specific (and lengthy) definitions and **exceptions** to these prohibitions which impact “student learners” that schools and school-to-work partnerships should take into consideration. **In short, 16 and 17 year old student learners can work at any time for unlimited hours. They may be exempted from the hazardous occupation prohibitions, if the student learner is in a bona fide cooperative vocational education program, under a written training agreement which provides that the student learner’s work is incidental to training, intermittent, for short periods of time, and under the close supervision of a qualified person; that safety instructions are given by the school and correlated with the on-the-job training, and that a schedule of organized and progressive work processes has been prepared. The written training agreement must contain the name of the student learner, be signed by the employer and a school authority; each must keep copies of the agreement.**

Occupational Limitations

The following 17 hazardous occupations in which minors under 18 may **not** be employed is as follows:

- | | |
|------|--|
| HO 1 | manufacturing and storing explosives |
| HO 2 | motor vehicle driving and outside helper |

HO 3	coal mining
HO 4	logging and sawmilling
HO 5	power-driven woodworking machines
HO 6	exposure to radioactive substances
HO 7	use of power-driven hoisting apparatus
HO 8	power-driven metal-forming, punching and shearing machines
HO 9	mining, other than coal
HO 10	slaughtering, or meat packing, processing, or rendering
HO 11	power-driven bakery machines
HO 12	power-driven paper-products machines
HO 13	manufacturing brick, tile and kindred products
HO 14	power-driven circular saws, band saws, and guillotine shears
HO 15	wrecking, demolition and ship-breaking operations
HO 16	roofing operations
HO 17	excavation operations

Hazardous Occupations Order Exemption Qualifications

(See the Child Labor Law Hazardous Occupation—Student Learner Exemption Agreement form on Page 30)

Child labor laws allow involvement in some potentially hazardous occupations if the individual is at least 16 years old, a cooperative vocational education student learner or apprentice, and all of the following are properly met:

16 - 17 YEARS OLD STUDENT LEARNER

- Enrolled in a state-recognized course, e.g., cooperative education programs.
- Hazardous portion of work is incidental to training.
- Hazardous portion of work is intermittent and for short periods.
- Under direct and close supervision of qualified experienced person.
- Safety instructions given by the school and/or employer.
- Employed under a written Cooperative Training Agreement.

APPRENTICES

- Employed in an apprenticeship program registered by Bureau of Apprenticeship and Training (BAT).
- Hazardous portion of work is incidental to training.
- Hazardous portion of work is intermittent and for short periods.
- Under direct and close supervision of a Journey person.
- Safety instructions given by the school and/or employer.
- Employed under written agreement.

Seven HOs Orders with Exemptions Applicable to Minors in Training

Sixteen and seventeen year old apprentices and student learners may be exempt from the following Hazardous Occupations Orders under the Federal child labor provisions for Nonagricultural Occupations:

HO5	<i>Work using power-driven woodworking machines, including the use of saws on construction sites.</i>
HO8	<i>Work using power-driven metal forming, punching, and shearing machines (but HO8 permits the use of a large group of machine tools used on metal, including lathes, turning machines, milling machines, grinding, boring machines, and planing machines).</i>
HO10	<i>Work involving slaughtering or meatpacking, processing, or rendering including the operation of power-driven meat slicers in retail stores.</i>
HO12	<i>Work using power-driven paper-products machines, including the operation and loading of paper balers in grocery stores.</i>
HO14	<i>Work involving the use of circular saws, band saws, and guillotine shears.</i>
HO16	<i>All work in roofing operations.</i>
HO17	<i>All work in excavating operations, including work in a trench as a plumber.</i>

Clarification of Hazardous Occupations Orders

The term operating or assisting to operate shall mean all work which involves starting or stopping a machine covered by this section, placing or removing materials into or from the machine, or any other work directly involved in operating the machine. The term does not include the stacking of materials by an employee in an area nearby or adjacent to the machine where such employee does not place the materials into the machine.

HO 2 Minors Permitted to Drive on the Job

No employees under 17 years of age may drive on public roadways as part of his or her job if that employment is subject to the FLSA.

16-year-olds may still drive on-the-job if the driving is confined exclusively to private property (except in or about a mine, place where logging or sawmilling is taking place, or excavation site covered by HO 17).

Seventeen-year-olds may drive on public roadways as part of their employment, but **ONLY** if all of the following requirements are met:

- The driving is limited to daylight hours;
- The 17-year-old holds a State license valid for the type of driving involved in the job performed;
- The 17-year-old has successfully completed a state approved driver education course and has no record of any moving violations at the time of hire;
- The automobile or truck is equipped with a seat belt for the driver and any passengers and the employer has instructed the youth that the seat belts must be used when driving the vehicle;
- The automobile or truck does not exceed 6,000 pounds gross vehicle weight;

- The driving may not involve:
 - Towing vehicles;
 - Route deliveries or route sales;
 - Transportation for hire of property, goods, or passenger;
 - Urgent, time-sensitive deliveries;
 - Transporting more than three passengers, including employees of the employer;
 - Driving beyond a 30-mile radius from the youth's place of employment;
 - More than two trips away from the primary place of employment in any single day to deliver the employer's goods to a customer (other than urgent, time-sensitive deliveries which are prohibited);
 - More than two trips away from the primary place of employment in any single day to transport passengers, other than employees of the employer.
- Such driving is only occasional and incidental to the 17-year-old's employment. This means that the youth may spend no more than one-third of the worktime in any workday and no more than 20 percent of the worktime in any workweek driving.

HO 10 Slaughtering, or meatpacking, processing or rendering. Establishments where meat or meat products are processed or handled, such as butcher shops, grocery stores, restaurants/fast-food establishments, hotels, delicatessens, and meat-locker (freezer-locker) companies, and establishments where any food product is prepared or processed for serving to customers.

HO 12 Power-driven paper-products machine. The term paper products machine shall mean all power-driven machines used in: (a) the remanufacture or conversion of paper or pulp into a finished product, including the preparation of such materials for recycling; or (b) the preparation of such materials for disposal. The term applies to such machines whether they are used in establishments that manufacture converted paper or pulp product, or in non-manufacturing establishments.

Tennessee Child Labor Act

Tennessee Child Labor Laws, similar to the Federal provisions, were developed to confine the employment of minors to periods that do not interfere with their schooling and to conditions which will not jeopardize their health and well being. The Federal provisions are very comprehensive and in some case more restrictive than the Tennessee law. **However, it is important for work-based learning coordinators to be familiar with both laws since they have a direct impact on the operation of a cooperative vocational education program and because they are often expected to serve as readily available sources of information within their communities.**

Employment shall mean (1) service for wages, or (2) being under a contract of hire, written or oral, express or implied. No child under the age of 18 may be employed in any work which, by reason of the nature of the work or place of performance, is dangerous to life or limb, or in which his/her health may be injured or his/her morals depraved. Any parents, guardian or other persons who cause or permit a child to work under such conditions are in violation of the law.

Age Limitations

Under 14 years of Age. Minors under 14 years of age may not be employed in any gainful occupation, except as otherwise provided in T.C.A., § 50-5-107.

14 and 15 Year Olds. Minors 14 and 15 years old may work no more than 3 hours a day, no more than 18 hours per week, and no earlier than 7:00 a.m. or later than 7:00 p.m. when school is in session. When school is not in session, they may work no more than 8 hours a day, no more than 40 hours per week, and no earlier than 6:00 a.m. or later than 9:00 p.m. **A copy of the minor's birth certificate is required to be in the minor's personnel file as proof of age.**

16 and 17 Year Olds. Minors who are 16 and 17 years old may work no later than 10:00 p.m. unless the employer has a parental consent form on file that allows the minor to work until midnight 3 nights a week Sunday through Thursday nights. These hours do not apply to Friday and Saturday nights nor when school is not in session. **A copy of the minor's birth certificate is required to be in the minor's personnel file as proof of the age.**

Youth Peddling

The State Child Labor Law was amended in 1999 to include Youth Peddling as a Restricted Occupation.

Definition:

The selling of merchandise by a **minor under the age of 16** to customers at the customer's residence, at a customer's place of business, or in public places such as street corners or public transportation stations.

Does not include the activities of individuals who are self-employed or who volunteer to sell goods or services on behalf of not-for-profit organizations or governmental entities or for school functions.

The law prohibits any minor between the ages of 14-16 years of age from being transported more than 5 miles from the minor's home.

If the minor is transported more than 5 miles and the employer is in violation of (1) working the minor

- More than 3 hours a day on school days,
- More than 18 hours a week during a school week,
- More than 8 hours a day on nonschool days,
- More than 40 hours a week during nonschool weeks,
- After 7:00 p.m. if next day is a school day;

and (2) recordkeeping requirements of T.C.A., § 50-5-111, the employer may be subject to **penalties of not less than \$1,000 nor more than \$10,000 per violation.**

For more information regarding the Tennessee Child Labor Act, contact: Tennessee Department of Labor and Workforce Development, Labor Standards Division, 404 James Robertson Parkway, 16th Floor Parkway Tower, Suite 1606, Nashville, TN 37243-0657, (615) 741-2858.

Comparison—Federal and Tennessee Child Labor Laws

When both the FLSA and the State's child labor laws regulate the same activity or conduct and their rules conflict, the stricter labor standard is the one that applies. Page 26 provides a Comparison of the FLSA and Tennessee Child Labor Act.

Comparison-Federal and Tennessee Child Labor Laws (Chart)

The Tennessee *Occupational Limitations and Exceptions to Hazardous Occupations Orders* are essentially the same as the Federal Child Labor Laws.
The Tennessee exceptions to the *Federal Acceptable Hours* are shown below in bold print.

AGE	ACCEPTABLE HOURS		OCCUPATIONAL LIMITATIONS	EXCEPTIONS TO HAZARDOUS OCCUPATIONS ORDERS
	SCHOOL DAYS	NON-SCHOOL DAYS		
Under age 14	NONE Unless employed in an occupation NOT covered by FLSA, e.g., show business, working for parents, newspaper delivery, etc.		Illegal to employ unless in FLSA exempt employment	NONE
14-15	Outside of school hours Up to 3 hours per day Up to 18 hours per week Between 7 am and 7 pm	Up to 8 hours per day Up to 40 hours per week Between 7 am and 9 pm (June 1 - Labor Day)	May not work in the following occupations: <ul style="list-style-type: none"> Cooking other than at lunch counters/snack bars and within view of customers Manufacturing, mining, and processing Most transportation jobs Work in warehouses and workrooms On construction jobs except in the office In any job involving hoists, conveyer belts, power-driven lawn mowers and other power-driven machinery Must be provided a thirty (30) minute uninterrupted rest period or meal break, if scheduled to work six (6) hours consecutively.	NONE
14-15 WECEP Special Populations	Any time during school day Up to 3 hours per day Up to 23 hours per week Between 7 am and 7 pm (June 1 - Labor Day)	Up to 8 hours per day Up to 40 hours per week Between 7 am and 9 pm	YES The Wage and Hour Administration permits WECEP participants employment which is otherwise prohibited. Contact the Tennessee Department of Education. Must be provided a thirty (30) minute uninterrupted rest period or meal break, if scheduled to work six (6) hours consecutively.	NONE
	Exemption from hours and time of day restrictions for performing "sports-attending services" at professional sporting events, e.g., bat boy or girl.			
16-17	If a statement of consent is signed and notarized by the parents or guardians, 16 or 17 year old minors may work between the hours of 10 pm and 12 midnight no more than three (3) nights per week (Sunday through Thursday),	No limitations	NONE Other than for Hazardous Occupations Orders	YES Exemptions for student learners and apprentices

REQUIRED FORMS

- **Child Labor Law Hazardous Occupation Student Learner Exemption Agreement page 28.**

Please see Work-Based Learning Manual for other forms required.

All forms are subject to monitoring by DOE and/or TDOLWD and must remain in the minors employment file at the site of placement.

Child Labor Law Hazardous Occupation Student Learner Exemption Agreement

Last Name	First Name	MI	Social Security No.	Date of Birth
District		School		Training Program #

CIRCLE THE HAZARDOUS OCCUPATION FOR WHICH THE EXEMPTION APPLIES:

- Work using power-driven woodworking machines, including the use of saws on construction sites.
 - Work using power-driven metal forming, punching, and shearing machines (but HO8 permits the use of a large group of machine tools used on metal, including lathes, turning machines, milling machines, grinding, boring machines, and planing machines).
 - Work involving slaughtering or meatpacking, processing, or rendering including the operation of power-driven meat slicers in retail stores.
 - Work using power-driven paper-products machines, including the operation and loading of paper balers in grocery stores.
 - Work involving the use of circular saws, band saws, and guillotine shears.
 - All work in roofing operations.
 - All work in excavating operations, including work in a trench as a plumber.
-

In accordance with T.C.A., §50-5-107(10), (11) and (12), the undersigned attest to the following:

1. The student learner is enrolled in a youth vocational training program under a recognized state or local educational authority.
2. The work of the student learner in the occupation declared particularly hazardous is incidental to the training received.
3. That the work performed shall be intermittent and for short periods of time and under the direct and close supervision of a qualified and experienced person.
4. That safety instructions shall be given by the school and correlated by the employer with on-the-job training.
5. That the student has a schedule of organized and progressive work processes to perform on the job.

Student's Name (type or print)	Student's Signature
Parent's or Guardian's Name (type or print)	Parent's or Guardian's Signature
Employer's Name (type or print)	Employer's Signature
Coordinator's Name (type or print)	Coordinator's Signature
Principal's Name (type or print)	Principal's Signature
Optional: Superintendent's Name (type or print)	Optional: Superintendent's Signature

RESOURCES

The following resources on FLSA are available from the U.S. Department of Labor, Wage and Hour Division, 1321 Murfreesboro Road, Suite 511, Nashville, TN 37217-9884, (615) 781-5344:

- Handy Reference Guide to the Fair Labor Standards Act, WH Publication 1282.
-
- Employment Relationship Under the Fair Labor Standards Act, WH Publication 1297.
-
- Interpretive Bulletin, Part 785: Hours Worked Under the Fair Labor Standards Act of 1938, As Amended.
-
- The Child Labor Requirements in Non-Agriculture Occupations Under the Fair Labor Standards Act, Child Labor Bulletin No. 101.
-
- The Child Labor Requirements in Agriculture Under the Fair Labor Standards Act, Child Labor Bulletin No. 102.

FOR ADDITIONAL INFORMATION ON FLSA, CONTACT:

ATLANTA REGION

(Alabama, Florida, Georgia, Kentucky, Mississippi,
North Carolina, South Carolina, Tennessee)

**U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division**
Atlanta Federal Center
61 Forsyth St., SW, Room 7M10
Atlanta, Georgia 30303
PHONE: (404) 562-2201
FAX: (404) 562-2180

**U.S. Department of Labor
Wage and Hour Division**
1321 Murfreesboro Road
Suite 511
Nashville, Tennessee 37217-9884
PHONE: (615) 781-5344
FAX: (615) 781-5347

**FOR FURTHER INFORMATION ON THE TENNESSEE CHILD LABOR ACT,
CONTACT:**

The Tennessee Department of Labor and Workforce Development,
Labor Standards Division
404 James Robertson Parkway,
6th Floor Parkway Tower, Suite 1606,
Nashville, TN 37243-0657,
(615) 741-2858. Option #3

**FOR INFORMATION ON TENNESSEE OCCUPATIONAL SAFETY & HEALTH
ADMINISTRATION (TOSHA), CONTACT:**

The Tennessee Department of Labor and Workforce Development,
Occupational Safety & Health Administration
710 James Robertson Parkway
Andrew Johnson Tower 3rd Floor
Nashville, TN 37243-0659
(800) 249-8510 or (615)-741-2397

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